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9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 863-A

12 **ROBERT KEITH BROWN**
13 361 Canyon Falls Drive
14 Folsom, CA 95630

A C C U S A T I O N

15 Civil Engineer License No. C 39431

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. David Brown (Complainant) brings this Accusation solely in his official capacity as
21 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department
22 of Consumer Affairs.

23 2. On or about August 23, 1985, the Board for Professional Engineers and Land
24 Surveyors issued Civil Engineer License Number C 39431 to Robert Keith Brown (Respondent).
25 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 101.1(b) of the Code states:

"(1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

"(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department."

5. Section 118 of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

6. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 477 of the Code states:

As used in this division:

1 (a) "Board" includes "bureau," "commission," "committee,"
2 "department," "division," "examining committee," "program," and "agency."

3 (b) "License" includes certificate, registration or other means to engage
4 in a business or profession regulated by this code."

5 8. Section 6775(c) provides in relevant part:

6 The board may receive and investigate complaints against registered
7 professional engineers, and make findings thereon.

8 By a majority vote, the board may reprove, suspend for a period not to
9 exceed two years, or revoke the certificate of any professional engineer registered
10 under this chapter.

11 (c) Who has been found guilty by the board of negligence or
12 incompetence in his or her practice.

13 (h) Who violates any provision of this chapter.

14 9. Section 6749 provides in pertinent part:

15 (a) A professional engineer shall use a written contract when contracting
16 to provide professional engineering services to a client pursuant to this chapter. The
17 written contract shall be executed by the professional engineer and the client, or his or
18 her representative, prior to the professional engineer commencing work, unless the
19 client knowingly states in writing that work may be commenced before the contract is
20 executed. The written contract shall include, but not be limited to, all of the
21 following:

22 3) The name, address, and license or certificate number of the professional
23 engineer, and the name and address of the client.

24 10. California Code of Regulations Title 16 section 411(a) (3)(C) provides in relevant
25 part:

26 a) The seal required by Section 6764 of the Code shall be not less than
27 one and one-half (1 1/2) inches in diameter and shall contain the following
28 information:

 3) In the center of seal, from top to bottom:

 (C) Expiration date or space within which the expiration date shall be
written;

11. Title 16 of the California Code of Regulations section 415:

 "A professional engineer or land surveyor licensed under the Code shall
practice and perform engineering or land surveying work only in the field or fields
in which he/she is by education and/or experience fully competent and proficient."

1 12. Title 16 of the California Code of Regulations section 475 provides in relevant part:

2 “To protect and safeguard the health, safety, welfare, and property of the public,
3 every person who is licensed by the Board as a professional engineer, including
4 licensees employed in any manner by a governmental entity or in private practice,
5 shall comply with this Code of Professional Conduct. A violation of this Code of
6 Professional Conduct in the practice of professional engineering constitutes
unprofessional conduct and is grounds for disciplinary action pursuant to Section
6775 of the Code. This Code of Professional Conduct shall be used for the sole
purpose of investigating complaints and making findings thereon under Section
6775 of the Code.

7 (a) Compliance with Laws Applicable to a Project:

8 A licensee shall provide professional services for a project in a
9 manner that is consistent with the laws, codes, ordinances, rules,
10 and regulations applicable to that project. A licensee may obtain
11 and rely upon the advice of other professionals (e.g., architects,
attorneys, professional engineers, professional land surveyors,
and other qualified persons) as to the intent and meaning of such
laws, codes, and regulations.

12 (e) Document Submittal:

13 (2) A licensee shall not misrepresent the completeness
14 of the professional documents he or she prepared to his or her
client or to other involved parties.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Incompetence)

17 13. Respondent has subjected his license to discipline pursuant to section
18 6775(b) and (c) in that respondent was incompetent in that respondent failed to adhere to the
19 Standard of Practice for Geotechnical Investigations and Geologic Hazard Reports for Public
20 Schools in preparing a consulting report for Junction Elementary School District in or about
21 December 18, 2002. Respondent was incompetent as follows:

22 14. Respondent was required to follow California Division of Mines and
23 Geology Note 48. Respondent failed to follow the requirements of the note in that respondent's
24 consulting report did not include the following:

25 A. Geologic Maps both regional and site specific, and cross-sections.

26 B. Evaluation of historical seismicity.

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28 C. Probabilistic Seismic Hazard Analysis, upper bound and design basis earthquake

1 motions.

2 D. Engineering geology report signed by a certified engineering geologist.

3 15. By failing to include in the consulting report the information set forth in
4 paragraph 14, respondent failed to exercise that degree of care, learning, experience and skill
5 normally exercised by members of this profession and was incompetent.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Misrepresentation)

8 16. Respondent has subjected his license to discipline pursuant to section 6775
9 (b) and 16 CCR 475(e)(2) in that respondent misrepresented the consulting report would fully
10 comply and or fully complied with California Division of Mines and Geology Notes number 37
11 and 48.

12 17. Paragraph 14 is incorporated herein as though set forth at length. In
13 performing and omitting to perform the acts set forth in paragraph 14, respondent
14 misrepresented the completeness of the consultation report.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Negligence)

17 18. Respondent subjected his license to discipline pursuant to section 6775(c) in
18 that respondent was negligent in his preparation of the consulting report by failing to include
19 sufficient geologic background to support a determination the land had landslide hazards.

20 19. Respondent's report omitted factual information the subject property was
21 located on a debris flow fan at the base of a large steep-gradient hill-slope. Although respondent
22 described the area as being underlain by colluvium that can be defined as a landslide, respondent
23 was negligent by failing to review, obtain, inspect and include in the consultation report, aerial
24 photographs of the subject site for at least the preceding 50 to 80 years, identify the larger
25 landslide complex and addressed the potential impact. Respondent was negligent by failing to
26 perform these tasks and include the information in the consultation report.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Improper Contract)

3 20. Respondent's license is subject to discipline pursuant to section 6749(a)(3) in
4 that respondent's contract failed to include all legally required provisions as follows:

5 21. On or about July 23, 2002, respondent submitted a proposal to the school
6 district that was subsequently accepted and became the contract between respondent and the
7 school district. Respondent's proposal failed to include respondent's license certificate numbers
8 and expiration dates.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
12 decision:

13 1. Revoking or suspending Civil Engineer License Number C 39431, issued to Robert
14 Keith Brown;

15 2. Ordering Robert Keith Brown to pay the Board for Professional Engineers and Land
16 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3;

18 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: 11/25/09

Original Signed

22 DAVID BROWN
23 Executive Officer
24 Board for Professional Engineers and Land Surveyors
25 Department of Consumer Affairs
26 State of California
27 Complainant
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